

Regular Session, 2004

ACT No. 420

HOUSE BILL NO. 911

BY REPRESENTATIVES LANCASTER, FRITH, MARCHAND, MURRAY, PINAC,
T. POWELL, RITCHIE, STRAIN, TRAHAN, TUCKER, AND WHITE

1 AN ACT

2 To amend and reenact Chapter 7 of Title 6 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 6:551 through 570.6, relative to foreign banks; to provide for
4 functions and powers of such banks; to provide for certain prohibited activities; to
5 provide for certain additional powers and functions of foreign banks in Louisiana;
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 7 of Title 6 of the Louisiana Revised Statutes of 1950, comprised
9 of R.S. 6:551 through 570.6, is hereby amended and reenacted to read as follows:

10 CHAPTER 7. INTERNATIONAL BANKING ACTIVITIES

11 PART I. ACTIVITIES OF FOREIGN BANKS

12 ~~§550~~ 551. Definitions

13 For purposes of this Part the following definitions shall apply:

14 (1) "Agency" means any office or any place of business of a foreign bank
15 located in any state of the United States at which credit balances are maintained
16 incidental to or arising out of the exercise of banking powers, checks are paid, or
17 money is lent, but at which deposits may not be accepted ~~from citizens or residents~~
18 ~~of the United States~~.

19 (2) "Branch" means any office or any place of business of a foreign bank
20 located in any state of the United States at which nonretail deposits are received,
21 specifically only those allowed by the International Banking Act of 1978.

22 (3) "Commissioner" means the commissioner of financial institutions.

1 (4) "Credit balances" are funds received at the agency incidental to or arising
2 out of the exercise of its authorized activities in this state that are not intended to be
3 deposits and that do not remain in the agency after the transaction or transactions to
4 which they relate are completed.

5 (5) "Federal agency" means an agency of a foreign bank established and
6 operating under the International Banking Act of 1978.

7 (6) "Federal branch" means a branch of a foreign bank established and
8 operating under the International Banking Act of 1978.

9 (7) "Foreign bank" means any company organized under the laws of a foreign
10 country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the
11 Virgin Islands, which engages in the business of banking, or any subsidiary or
12 affiliate, organized under such laws, of any such company. For the purposes of this
13 Part the term "foreign bank" includes without limitation foreign commercial banks,
14 foreign merchant banks, and other foreign institutions that engage in banking
15 activities usual in connection with the business of banking in the countries where
16 such foreign institutions are organized or operating. The term "foreign bank" shall
17 include a corporation of which the sole shareholders are one or more foreign banks
18 or holding companies which own or control one or more foreign banks which are
19 authorized to carry on a banking business, or a central bank or government agency
20 of a foreign country and any affiliate or division thereof, which has the power to
21 receive deposits from the general public in the country where it is chartered and
22 organized, and which is under the supervision of the central bank or other bank
23 regulatory authority of such country.

24 (8) "Limited federal agency" means a federal agency licensed by the
25 comptroller which, pursuant to an agreement between the parent foreign bank and the
26 Federal Reserve Board, can receive only such deposits and make only such loans as
27 are permissible under the International Banking Act of 1978.

28 (9) "Office" means any state representative office, agreement corporation,
29 state administrative office, or international bank facility.

1 ~~(9)~~ (10) "State agency" means an agency of a foreign bank established and
2 operating under the laws of this state.

3 ~~(10)~~ (11) "State branch" means a branch of a foreign bank established and
4 operating under the laws of this state.

5 ~~(11)~~ (12) "State representative office" means a representative office of a
6 foreign bank ~~licensed and~~ which has been granted a certificate of authority and is
7 operating in this state that engages solely in representative and administrative
8 functions, such as soliciting new business or acting as a liaison between the bank's
9 main office and customers in this state. Such offices shall not make business
10 decisions, except those relating to the premises and personnel of the office, for the
11 foreign bank including contracting for any deposit or deposit-like liability on behalf
12 of the foreign bank.

13 §552. Foreign banking activities; authorized

14 A foreign bank may open and operate a representative office, administrative
15 office, agency, branch, subsidiary bank, or an Edge Act or agreement corporation or
16 operate as an international banking facility in this state subject to the provisions of
17 this Chapter and applicable federal law.

18 §553. Subsidiary bank; authorization

19 A. A foreign bank may establish a subsidiary bank in this state subject to the
20 provisions of this Chapter and applicable federal law.

21 B. A foreign bank may acquire a subsidiary bank in this state in accordance
22 with the federal Bank Holding Company Act and other applicable federal and state
23 law.

24 C.(1) A foreign bank may operate a subsidiary bank in this state by
25 organizing a new bank in this state either under a charter issued by the office of the
26 comptroller of the currency under the National Bank Act or a state charter issued by
27 the commissioner of financial institutions.

1 (2) An application for a state-chartered subsidiary bank shall be submitted
2 to the commissioner of financial institutions and shall comply with all applicable
3 provisions of state law.

4 D. All deposits in the subsidiary bank shall be insured by the Federal Deposit
5 Insurance Corporation.

6 E. A subsidiary bank of a foreign bank shall have the same banking powers,
7 subject to the same restrictions, limitations, reporting, and other requirements as
8 domestic banks and may engage in the same banking activities as other domestic
9 banks.

10 §554. Edge Act or agreement corporation; authorization

11 A. Any United States bank or foreign bank may organize or acquire a
12 subsidiary to engage in international banking activities specifically authorized in the
13 Edge Act. This subsidiary may be an Edge Act corporation chartered pursuant to
14 federal law or an agreement corporation chartered under state law.

15 B. An agreement corporation is a corporation chartered under the provisions
16 of this Chapter subject to the approval by the commissioner of financial institutions
17 in which the corporation agreed with the board of governors of the federal reserve
18 system to limit its activities to those permitted to an Edge Act corporation.

19 ~~§554~~ 555. Location; limitation

20 A foreign bank may, upon compliance with this Part, establish and operate
21 a state agency, branch, bank, or office in any parish of this state ~~having a population~~
22 ~~of more than three hundred fifty thousand.~~

23 ~~§552~~ 556. Filing requirements

24 Before transacting business in this state through ~~an~~ a state agency, branch, or
25 office a foreign bank shall file with the commissioner:

26 (1) A duly authenticated copy of its articles of incorporation and bylaws or
27 other constitutive documents, and if a copy is in a language other than English, a
28 translation of the document, under the oath of the translator, must be attached.

1 (2) A duly executed instrument, by its terms of indefinite duration and
2 irrevocable, appointing the commissioner as its agent for service of process on whom
3 a notice or process issued by a court in this state may be served in an action or
4 proceeding relating to the business of the foreign bank in this state.

5 (3) A written certificate of designation, which may be changed from time to
6 time by the filing of a new certificate of designation, specifying the name and address
7 of the officer, agent, or other person to whom such notice or process shall be
8 forwarded by the commissioner.

9 ~~§553~~ 557. Requirements to operate; fees

10 A foreign bank may not maintain and operate ~~an~~ a state agency, branch, or
11 office in this state unless the foreign bank:

12 (1) Is authorized by its charter to carry on such a business and the foreign
13 bank has complied with the laws of the country under which it is chartered.

14 (2) Has furnished to the commissioner proof of the nature and character of
15 its business and of its financial condition that the commissioner requires.

16 (3) Has filed with the commissioner a certified copy of the information
17 required by ~~R.S. 6:552~~ R.S. 6:556.

18 (4) Has paid an application fee ~~of ten thousand dollars to be determined by~~
19 the commissioner as reasonable, fair, and sufficient for the management and
20 oversight required by this Chapter.

21 (5) Has been issued a ~~licensed~~ certificate of authority by the commissioner.
22 ~~§554~~ 558. Application required; ~~contents~~ contents

23 A. To obtain a ~~license~~ certificate of authority for, or authority to operate, a
24 state agency, branch, or office, a foreign bank must submit to the commissioner an
25 application which shall set forth:

26 (1) The name of the foreign bank, together with the country under the laws
27 of which it was organized.

28 (2) The date of its incorporation and the period of its duration.

(3) The address of its principal office in the country under the laws of which it was organized.

(4) The name of other states and countries in which it is admitted or qualified to transact business.

(5) The names and addresses of its directors and principal officers.

(6) A complete and detailed statement of its financial condition including the actual value of its assets, which shall be at least one million dollars in excess of its liabilities actual value of its assets, which shall be at least one million dollars in excess of its liabilities.

(7) A copy of any applications it is required to file with any federal agencies to establish the agency, branch, or office.

~~(7)~~ (8) Such additional information as may be necessary and appropriate or as may be required by the commissioner.

B. The approval of the Office of Financial Institutions shall be required to establish any subsequent state branches, agency offices, or other offices. The Office of Financial Institutions shall be authorized to promulgate any necessary rules and fees in order to provide for these additional locations.

C. Any applications or notifications filed under this subsection shall also be filed with the Louisiana Tax Commission.

D. All applications, notifications, and correspondence filed with the Office of Financial Institutions shall be in English.

§555 559. Approval or disapproval of application

A. The commissioner may approve or disapprove an application but may not approve an application unless the requirements of this Part relating to the foreign banks are met.

B. The commissioner may disapprove an application if he determines that:

(1) The foreign bank is organized in a country that does not permit banks organized under the laws of this state to undertake activities similar to those described in this Part; or

1 (2) Granting an application of a foreign bank would be detrimental to the
2 public interest.

3 §~~556~~ 560. ~~License~~ Certificate of authority; transfer prohibited; display required

4 A foreign bank may engage in the business authorized by the provisions of
5 this Part ~~relating to bank agencies~~ for not more than one year after the date of the
6 ~~license certificate of authority~~ or until the ~~license certificate of authority~~ is suspended
7 or revoked. No such ~~license certificate of authority~~ shall be transferable or
8 assignable. Every such ~~license certificate of authority~~ shall be, at all times,
9 conspicuously displayed in the place of business specified in the ~~license certificate~~
10 of authority.

11 §~~557~~ 561. Renewal

12 A ~~license certificate of authority~~ may be renewed annually within thirty days
13 ~~of the of before~~ the expiration of such ~~license certificate of authority~~ upon application
14 to the commissioner. Such ~~license certificate of authority~~ may be renewed upon a
15 determination that the foreign bank is in a safe and satisfactory condition, that it has
16 complied with the requirements of law with respect to the ~~agency branch~~, agency, or
17 office, that such renewal is duly authorized by proper corporate action, and that a
18 renewal fee of one thousand dollars has been paid.

19 §~~558~~ 562. Revocation and surrender

20 A. A ~~license certificate of authority~~ may be revoked by the commissioner at
21 any time upon a determination that the foreign bank has not met the criteria
22 established by ~~R.S. 6:557~~ R.S. 6:561 for the renewal of a ~~license certificate of~~
23 authority.

24 B. In the event that a ~~license certificate of authority~~ is revoked or a renewal
25 refused by the commissioner, all rights and privileges of the foreign bank to transact
26 the business thus ~~licensed~~ granted through the certificate of authority shall cease, and
27 such ~~license certificate of authority~~ shall be surrendered to the commissioner within
28 twenty-four hours after the licensee has received written notice of such decision.

1 ~~§559 563. Authorized State Agency;~~ authorized actions

2 A foreign bank ~~licensed~~ granted a certificate of authority to transact business
3 in this state through ~~an~~ a state agency may:

4 (1) Borrow and lend money with or without real or personal security.

5 (2) Purchase, sell, and make loans whether or not secured by bonds or
6 mortgages on immovable property.

7 (3) Engage in foreign exchange transactions.

8 (4) Issue, advise, confirm, and otherwise deal with letters of credit and pay,
9 accept, or negotiate drafts drawn thereunder.

10 (5) Accept bills of exchange or drafts.

11 (6) Buy or acquire and sell or dispose of but not discount bills of exchange,
12 drafts, notes, acceptances, and other obligations for the payment of money.

13 (7) Maintain credit balances.

14 (8) Receive money for transmission and transmit the money from its ~~licensed~~
15 authorized office in this state to any other place.

16 (9) Perform such other activities as the commissioner may from time to time
17 determine are analogous or incidental to the foregoing; provided that the foreign bank
18 corporation may not exercise fiduciary powers or receive deposits in this state and
19 may not otherwise exercise banking or discounting privileges in this state.

20 ~~§564. State representative office; authorization; permitted activities~~

21 A. With the authorization of the commisioner of financial institutions, a
22 foreign bank may, subject to approval from the Federal Reserve Board, establish a
23 representative office in this state subject to the provisions of this Chapter and
24 applicable federal law.

25 B. A representative office may engage in the following activities in this state:

26 (1) Promote and assist the deposit-taking, lending, or other financial or
27 banking activities of a foreign bank.

28 (2) Serve as liaison in this state between a foreign bank and its existing or
29 potential customers.

1 (3) Solicit business for the foreign bank and its subsidiaries and affiliates.

2 (4) Provide information to foreign bank customers concerning their accounts,

3 answer questions, and receive applications for extensions of credit and other banking

4 services, and transmit documents on behalf of customers.

5 (5) Make arrangements for customers to transact business on their accounts.

6 C. A representative office may not receive deposits, pay checks or other

7 instruments, or make loans.

8 §565. State administrative office; authorization; permitted activities

9 A. With the authorization of the commissioner of financial institutions, a

10 foreign bank may, subject to approval from the Federal Reserve Board, establish a

11 state administrative office in this state subject to the provisions of this Chapter and

12 applicable federal law.

13 B. An administrative office may engage only in the following activities:

14 (1) Administration of personnel and operations.

15 (2) Engage in data processing or recordkeeping activities.

16 §566. Branch banks and agencies

17 A. A federal agency or branch may engage in activities in this state as

18 authorized under the International Banking Act of 1978, as amended, and any other

19 applicable federal law.

20 B. A foreign bank may establish a state authorized branch or agency in this

21 state pursuant to a certificate of authority issued by the commissioner.

22 C. A state branch may establish one or more branches in this state to the

23 same extent permitted banks from other states and shall have the same rights and

24 privileges as federally licensed foreign branch banks. A federal branch shall maintain

25 accounts and records separate from those of its parent foreign bank of which it is a

26 branch.

27 D. A branch of a foreign bank operating in this state may not accept public

28 deposits.

1 §567. State international banking facilities

2 A. Any branch or agency of a foreign bank, domestic bank, and any Edge Act
3 or agreement corporation may establish and maintain a state international banking
4 facility, subject to the authorization of the commissioner of financial institutions.

5 B. A state international banking facility is a separate set of accounts
6 segregated on the books and records of such financial entity which includes only
7 international time deposits and international loans, as well as income and expense
8 accounts relating to its international loans and accounts.

9 C. An entity establishing a state international banking facility may accept
10 deposits only in such facility from foreign residents, other international banking
11 facilities, and other offices of the institution which created the state international
12 banking facility. Deposits and extensions of credit shall be used only to support
13 customer operations outside the United States.

14 ~~§560~~ §568. Purchase of real estate

15 A foreign bank's authority to purchase and own real estate and loan money
16 in this state is subject to the limitations imposed on state banks.

17 ~~§561. Branch or federal agency prohibited~~

18 ~~The operation of a federal agency of a foreign bank having as its home state~~
19 ~~a state other than this state is hereby expressly prohibited. No foreign bank may~~
20 ~~maintain a branch in this state.~~

21 ~~§562~~ §569. Paid-in capital; surplus; undivided profits

22 Before opening ~~an~~ a branch, agency, or office in this state and annually
23 thereafter so long as ~~an~~ a branch, agency, or office is maintained in this state, a
24 foreign bank ~~licensed~~ granted a certificate of authority pursuant to this Part shall
25 certify to the commissioner the amount of its paid-in capital, its surplus, and its
26 undivided profits, each expressed in the currency of the country of its incorporations;
27 the dollar equivalent of which amount, as determined by the commissioner, shall be
28 deemed to be the amount of its capital, surplus, and undivided profits.

1 §570. Capital requirements

2 Every foreign bank issued a certificate of authority to transact business in this
3 state under the provisions of this Chapter shall comply with the following
4 requirements, in addition to other requirements specifically provided in this Chapter:

5 (1) Except as provided in Paragraph (2) of this Subsection, a foreign bank
6 shall have total capital accounts in the following minimum amounts:

7 (a) Twenty-five million dollars for the establishment of an agency, a branch,
8 administrative office, agreement corporation, or international bank facility.

9 (b) Ten million dollars for the establishment of an international
10 representative office.

11 (2) The commissioner of financial institutions may approve an application
12 for a certificate of authority to establish an agency, branch, or office if:

13 (a) The foreign bank is licensed to receive deposits from the general public
14 in the country where it is organized and licensed to engage in such other activities as
15 are usual in connection with the business of banking in such country:

16 (b) The commissioner receives a certificate that is issued by the banking or
17 supervisory authority of the country in which the foreign bank is organized and
18 licensed which states that the foreign bank is duly organized and licensed and
19 lawfully existing in good standing, and is empowered to conduct a banking business;
20 and

21 (c) The foreign bank has been in the business of banking for at least ten
22 years. However, the commissioner shall not approve any application under this
23 Section for a foreign bank having capital accounts of less than ten million dollars.

24 (3) The commissioner may specify such other conditions as he determines
25 appropriate, considering the public interest, the need to maintain a sound and
26 competitive banking system, and the preservation of an environment conducive to the
27 conduct of an international banking business in this state. In translating the capital
28 accounts of a foreign bank, the commissioner may consider monetary corrections

1 accounts that reflect results consistent with the requirements of generally accepted
2 accounting principles in the United States.

3 (4) For the purpose of this Chapter, the capital accounts of a foreign bank
4 shall be determined in accordance with rules adopted by the commissioner. In
5 adopting such rules, the commissioner shall consider similar rules adopted by bank
6 regulatory agencies in the United States and the need to provide reasonably consistent
7 regulatory requirements for international banking corporations which will maintain
8 the safe and sound condition of international banking corporations doing business in
9 this state.

10 §~~563~~ 570.1. Purchase of credit instruments

11 Purchases and discounts of bills of exchange, bonds, debentures, and other
12 obligations and extensions of credit and acceptances by an agency or branch within
13 this state shall be subject to the same limitations as to amount in relation to capital,
14 surplus, and undivided profits as are applicable to banks organized under the laws of
15 this state; provided that with the prior approval of the commissioner, the capital notes
16 and capital debentures of such foreign banks may be treated as capital in computing
17 such limitations.

18 §~~564~~ 570.2. Annual report and periodic reporting requirements

19 A. Every foreign bank doing business in this state and subject to this Chapter
20 shall, at such times and in such form as the commissioner shall prescribe, make
21 written reports in the English language to the commissioner under the oath of one of
22 its officers, managers, or agents transacting business in this state, showing the
23 amount of its assets and liabilities and containing such other matters as the
24 commissioner shall prescribe. If any foreign bank shall fail to make any such report,
25 as directed by the commissioner, or if any such report shall contain any false
26 statement knowingly made, the same shall be grounds for revocation of the ~~license~~
27 certificate of authority of the foreign bank.

1 B. Every foreign bank operating in this state and subject to this Chapter shall
2 file with the Office of Financial Institutions all periodic reports it is required to file
3 with any federal agency.

4 C. The commissioner of the Office of Financial Institutions shall have the
5 authority to require any foreign bank operating within Louisiana, which is subject to
6 this Chapter, to provide to the Office of Financial Institutions annual audited
7 financial statements of its total operations, as well as an audited special purpose
8 financial presentation of its Louisiana operations detailed on a separate basis.

9 D. The commissioner of the Office of Financial Institutions is authorized to
10 assess fees regarding the late filing of any required filings or reports.

11 §565 570.3. Termination

12 A. When a foreign bank ~~licensed~~ which has been granted a certificate of
13 authority to maintain an agency, branch, or office in this state is dissolved or its
14 authority or existence is otherwise terminated or canceled in the jurisdiction of its
15 incorporation, a certificate of the official responsible for records of banking
16 corporations of the jurisdiction of incorporation of such foreign bank attesting to the
17 occurrence of any such event or a certified copy of an order or decree of a court of
18 such jurisdiction directing the dissolution of such foreign bank or the termination of
19 its existence or the cancellation of its authority shall be delivered by the
20 commissioner. The filing of the certificate, order, or decree shall have the same
21 effect as the revocation of such foreign bank's ~~license~~ certificate of authority.

22 B. The commissioner shall continue as agent of the foreign bank upon whom
23 process against it may be served in any action based upon any liability or obligation
24 incurred by the foreign bank within this state prior to the filing of such certificate,
25 order, or decree; and the commissioner shall promptly cause a copy of such process
26 to be mailed by registered or certified mail, return receipt requested, to such foreign
27 bank at the post office address specified for such purpose on file with the
28 commissioner.

1 ~~§567~~ §570.4. Rules and regulations

2 The commissioner may promulgate rules and regulations in accordance with
3 the Administrative Procedure Act to provide for the regulation of bank agencies,
4 branches, and representative ~~entities~~ offices and any other authorized offices of
5 foreign banks operating in this state. Additionally, the commissioner may
6 promulgate any necessary rules and regulations regarding fees and assessments to
7 ensure that the costs of regulation of these entities are adequately recaptured.

8 §570.5. Examination authority

9 The Office of Financial Institutions shall have full authority to
10 examine, at any time, any branch, agency, or other office authorized under
11 this Chapter.

12 §570.6. Asset pledge requirements

13 The commissioner of the Office of Financial Institutions is authorized
14 to promulgate any necessary rules relating to asset pledge requirements for
15 foreign banks operating in Louisiana and subject to this Chapter.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____